



**UNITED STATES DEPARTMENT OF COMMERCE**  
National Oceanic and Atmospheric Administration  
**NATIONAL MARINE FISHERIES SERVICE**  
Southeast Regional Office  
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**NATIONAL MARINE FISHERIES SERVICE  
SOUTHEAST REGIONAL OFFICE, HABITAT CONSERVATION DIVISION  
ESSENTIAL FISH HABITAT GENERAL CONCURRENCE  
FOR SCIENTIFIC RESEARCH ACTIVITIES, EXEMPTED FISHING, AND EXEMPTED  
EDUCATION ACTIVITIES IN THE EXCLUSIVE ECONOMIC ZONE**

**PURPOSE:** To efficiently conduct essential fish habitat (EFH) consultations required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for certain scientific research, exempted fishing, and exempted education activities permitted by the National Marine Fisheries Service (NMFS) Southeast Regional Administrator in federal waters of the exclusive economic zone (EEZ) of the Gulf of Mexico, South Atlantic, and U.S. Caribbean.

**BACKGROUND:** The NMFS is responsible for the stewardship of the nation's living marine resources and their habitats. Under authority of the Magnuson-Stevens Act, NMFS works with regional fishery management councils (FMCs) to assess and predict the status of fish stocks, set catch limits, ensure compliance with fisheries regulations, and reduce bycatch.

The Magnuson-Stevens Act also requires FMCs and NMFS to identify and protect EFH by minimizing, to the extent practicable, the adverse effects of fishing. In the Southeast Region, the FMCs analyzed fishing gears and methods utilizing a variety of factors including the duration and frequency of impact, the intensity and spatial extent of impact, and the sensitivity of the habitat and habitat functions to impacts from fishing gear. As a result, certain fishing methods and gear have been prohibited or restricted in their use based on the potential to adversely impact EFH. Each of the FMCs analyses can be found in the following:

South Atlantic Fishery Management Council's 1998 Generic EFH Amendment and associated Habitat Plan for the South Atlantic Region

Gulf of Mexico Fishery Management Council's 2005 Generic EFH Amendment #3 and associated Environmental Impact Statement (EIS) and

Caribbean Fishery Management Council's 2005 Sustainable Fisheries Act Amendment and associated EIS.

The Magnuson-Stevens Act also requires federal agencies involved in permitting (or licensing), funding, or undertaking actions which may adversely impact EFH to consult with NMFS regarding their activity's impacts on EFH. As specified in 50 CFR 600.745, in situations where an activity would be prohibited by a fishery management plan or fishing regulations, the NMFS Regional Administrator may:

- Upon review of a scientific research plan, issue a letter of acknowledgement (LOA) to persons planning to conduct scientific research activities in the EEZ. Activities conducted in accordance with a scientific research plan acknowledged by an LOA are presumed to be scientific research.

- Authorize an exempted fishing permit (EFP) allowing the target or incidental harvest of species managed under a fishery management plan or fishery regulations that would otherwise be prohibited for: limited testing; public display; data collection; exploratory; health and safety; environmental cleanup; and/or hazard removal purposes.
- Upon review of a valid exempted educational activity (EEA), authorize for educational purposes, the target or incidental harvest of species managed under a fishery management plan or fishery regulations that would otherwise be prohibited.

In the Southeast Region, the Sustainable Fisheries Division consults with the Habitat Conservation Division (HCD) during their evaluation of scientific research, exempted fishing, and EEAs for the Regional Administrator. Scientific research and exempted educational activities often propose the use of sampling gears or collection methods which have been identified by the FMCs to have the potential to adversely impact EFH and therefore require an EFH consultation. Due to the limited scope and design of most scientific research, exempted fishing, and EEAs, the only option to protect and conserve EFH would be to not conduct the activity at all which would be contrary to 50 CFR 600.745(a). However, for certain types of actions resulting in no more than minimal adverse effects to EFH individually and cumulatively, NMFS may issue a statement of General Concurrence in accordance with the requirements of 50 CFR 600.920(g). Research and monitoring activities are specifically identified as candidates for General Concurrence in the preamble to the EFH Final Rule in Comment 23 and Response B.

**QUALIFYING CRITERIA:** In order for Federal actions to qualify for a General Concurrence, NMFS must determine the following criteria of 50 CFR 600.920(g)(2) are met:

**The actions must be similar in nature and similar in their impact on EFH (50 CFR 600.920(g)(2)(i)(A)):** Scientific research, exempted fishing, and EEAs are generally sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ to increase scientific knowledge of the fishery resources or their environment using methods generally accepted as appropriate for scientific research. Research activities do not include the collection and retention of fish outside the scope of an applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display must be permitted under exempted fishing procedures.

**The actions must not cause greater than minimal adverse effects on EFH when implemented individually (50 CFR 600.920(g)(2)(i)(B)):** As the federal action agency in this matter, the Sustainable Fisheries Division reviews each application and makes a determination whether the application contains all of the required information and constitutes an activity appropriate for consideration for approval by the Regional Administrator. Applicants are required to identify the species (target and incidental) expected to be harvested, the amount of such harvest necessary to conduct the activity, the arrangements for disposition of all regulated species harvested, and any anticipated impacts on the environment, including impacts on EFH. Due to the limited scope and design of most scientific research, exempted fishing, and exempted educational activities, the only option to protect and conserve EFH would be to not conduct the activity at all.

**The actions must not cause greater than minimal cumulative adverse effects on EFH (50 CFR 600.920(g)(2)(i)(C)):** The LOA, EFP, and EEA specifies the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), persons, species, and gear involved in the activity. Due to the limited scope and design of most scientific research, exempted fishing, and exempted educational activities, the only option to protect and conserve EFH would be to not conduct the activity at all. Nonetheless, the Regional Administrator may attach terms and conditions consistent with the purpose of the exempted activity, and as otherwise necessary, for the conservation and management of the fishery resources and the marine environment, including requiring observers and data reporting. Therefore, cumulative impacts are expected to be minimal.

**Actions qualifying for a General Concurrence must be tracked to ensure their cumulative effects are no more than minimal (50 CFR 600.920(g)(2)(ii)):** See Notification procedure below. Additionally, the Sustainable Fisheries Division maintains records of activities authorized in accordance with 50 CFR 600.745.

**GENERAL CONCURRENCE:** Based on the above, the NMFS has determined the following activities are authorized for EFH General Concurrence:

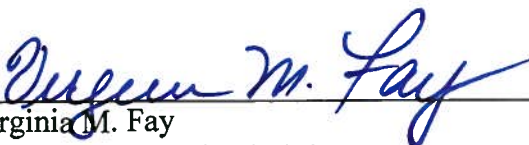
Scientific research, exempted fishing, and EEAs using methods generally accepted as appropriate for the intended purpose where the experimental design, nature of the collection, and/or scope of the activities limit anticipated impacts to EFH which otherwise could only be avoided by not conducting the activity at all and thus be considered contrary to 50 CFR 600.745(a).

**Exclusions:** The NMFS has determined the following activities are not authorized for EFH General Concurrence and require individual EFH consultation:

- Activities proposing the harvest of coral and coral reef resources, even in small amounts, for public display. In 1995, the Gulf of Mexico and South Atlantic FMCs established a program to authorize the culture of live rock which can be obtained through commercial sources and be utilized for public display purposes.

**NOTIFICATION:** When applying this General Concurrence to a proposed scientific research, exempted fishing, or exempted educational activity, the Sustainable Fisheries Division shall send an e-mail notification (or copy of a memorandum to the file) to the Habitat Conservation Division at [nmfs.ser.efhgeneralconcurrence@noa.gov](mailto:nmfs.ser.efhgeneralconcurrence@noa.gov).

**EFFECTIVE DATES:** NMFS will periodically review its findings of General Concurrence and may revise or revoke a General Concurrence if new information indicates the covered actions are having more than minimal adverse effects on EFH. This General Concurrence becomes effective on the date signed below and shall remain valid until revoked by the Southeast Regional Office Habitat Conservation Division.

  
Virginia M. Fay  
Assistant Regional Administrator  
Habitat Conservation Division

November 24, 2014

